84-1232 (1)

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ALEXANDER L. STEVAS,
CLERK

SUPREME COURT NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

1984-85 TERM

RAYFORD NORMAN JACKSON,

PETITIONER

VS.

STATE OF ALABAMA,

RESPONDENT

ON WRIT OF CERTIORARI TO
THE SUPREME COURT OF ALABAMA
(CASE NO. 83-1348)

PETITION FOR WRIT OF CERTIORARI

CHRISTOPHER KNIGHT
ATTORNEY FOR PETITIONER
255 SAINT FRANCIS STREET
MOBILE, ALABAMA 36602
(1-205-432-0457)

24

QUESTIONS PRESENTED FOR REVIEW

Was Petitioner, in a state prosecution for Attempted Assault in the First Degree and Possession of a Vehicle with Knowledge of an Obscured Identification Number, wherein he was convicted and received a concurrent sentence of twenty (20) years, denied his right to effective assistance of counsel and to a fair trial as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, where his trial counsel:

A. Failed to pursue a line of investigation in a manner prejudicial to Petitioner by failing to call witnesses of whom counsel had knowledge and who, under a reasonable interpretation of the facts, exonerated Petitioner of the offenses charged;

B. Failed to file any pretrial motions;

C. Failed to move for judgment of acquittal at the close of the State's case;

D. Failed to object to the trial judge's charge to the jury on the crime of Receiving Stolen Property, for which Petitioner was not being tried?

LIST OF PARTIES

The parties to this proceeding are Rayford Norman Jackson, the Petitioner, and the State of Alabama.

TABLE OF CONTENTS

	PAGE
QUESTIONS PRESENTED FOR REVIEW.....	i.
LIST OF PARTIES.....	ii.
TABLE OF CONTENTS.....	iii.
TABLE OF AUTHORITIES.....	iv.
REFERENCE TO REPORTS OF OPINIONS DELIVERED IN COURTS BELOW.....	1
GROUNDS INVOKING JURISDICTION.....	1
CONSTITUTIONAL PROVISIONS AND STATUTES.....	2
STATEMENT OF THE CASE.....	6
BASIS FOR FEDERAL JURISDICTION.....	7-8
ARGUMENT.....	14
APPENDIX.....	19
CERTIFICATE OF SERVICE.....	29

TABLE OF AUTHORITIES

PAGE

CASE LAW

Adams v. Balkcom, 688 F.2d 734 (11th Cir. 1982).....16

Davis v. Alabama, 596 F.2d 1214, vacated as moot, 446 U.S. 903 (1980).....16

Phelps v. State, 439 So.2d 922 (Ala. Crim. App. 1983).....16,17

Strickland v. Washington, ____ U.S. ____, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).....15,16 17

CONSTITUTIONAL PROVISIONS

U.S. CONST. amend. VI.....2

U.S. CONST. amend. XIV.....2

STATUTES

Code of Alabama, 1975, § 13A-4-2.....3,6

Code of Alabama, 1975, § 13A-5-9.....6

Code of Alabama, 1975, § 13A-6-20....3,6

Code of Alabama, 1975, § 13A-8-22....4,6

Code of Alabama, 1975, § 12-11-30....7

28 U.S.C. § 1257(3).....1

REFERENCE TO REPORTS OF OPINIONS DELIVERED IN COURTS BELOW

The convictions of Petitioner in the Circuit Court of Mobile County, Alabama, were affirmed by the Court of Criminal Appeals of Alabama without opinion on June 26, 1984,; application for rehearing was overruled on August 14, 1984; and Petition for Writ of Certiorari was denied without opinion by the Supreme Court of Alabama on November 30, 1984.

GROUNDS INVOKING JURISDICTION

The statutory provision which confers jurisdiction to review the judgment or decree in question by writ of certiorari is 28 U.S.C. § 1257(3), which permits review by the Supreme Court of the United States by writ of certiorari of the judgment of the highest court of a state where any right, privilege or immunity is

specially set up or claimed under the Constitution, treaties or statutes of the United States.

CONSTITUTIONAL PROVISIONS AND STATUTES

I. SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the Witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

II. FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction

the equal protection of its laws.

"Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

III. Code of Alabama (1975)

§13A-4-2. Attempt.

"(a) A person is guilty of an attempt to commit a crime if, with the intent to commit a specific offense, he does any overt act towards the commission of such offense.

"(b) It is no defense under this section that the offense charged to have been attempted was, under the attendant circumstances, factually or legally impossible of commission, if such offense could have been committed had the attendant circumstances been as the defendant believed them to be.

"(c) A person is not liable under this section if, under circumstances manifesting a voluntary and complete renunciation of this criminal intent, he avoided the commission of the offense attempted by abandoning his criminal effort and, if mere abandonment is insufficient to accomplish such avoidance, by taking further and affirmative steps which prevented the commission thereof. The burden of injecting this issue is on the defendant, but this does not shift the burden of proof."

§13A-6-20. Assault in the first degree.

"(a) A person commits the crime of assault in the first degree if:

"(1) With intent to cause serious physical injury to another person, he causes serious physical injury to any person by means of a deadly weapon or a dangerous instrument; or

"(2) With intent to disfigure another person seriously and permanently, or to destroy, amputate or disable permanently a member or organ of his body, he causes such an injury to any person; or

"(3) Under circumstances manifesting extreme indifference to the value of human life, he recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes serious physical injury to any person; or

"(4) In the course of and in furtherance of the commission or attempted commission of arson in the first degree, burglary in the first or second degree, escape in the first degree, kidnapping in the first degree, rape in the first degree, robbery in any degree, sodomy in the first degree or any other felony clearly dangerous to human life, or of immediate flight therefrom, he causes a serious physical injury to another person.

"(b) Assault in the first degree is a Class B felony."

§13A-8-22. Obscuring identity of vehicle.

"(A) A person commits the crime of obscuring identity of a vehicle if:

"(1) He obscures the manufacturer's serial number or any other distinguishing identification number or mark upon any vehicle or component part thereof, except tires, with intent to render it unidentifiable; or

"(2) He possesses a vehicle or component part thereof knowing that the manufacturer's serial number or other identification number or mark has been obscured unless he legally acquired ownership of the vehicle or part before the manufacturer's serial number was obscured or before he knew it was obscured.

"(b) 'Obscure' means to remove, deface, cover, alter, destroy or otherwise render unidentifiable.

"(c) 'Vehicle' means any propelled device in, upon or by which any person or property is transported on land, water or in the air, including stationary rails or tracks, and includes motor vehicles, motorboats, vessels and aircraft.

"(d) Proof that a person has obscured the manufacturer's serial number or other distinguishing identification number or mark on a vehicle is prima facie evidence that he did so with the intent to render it unidentifiable withint the meaning of subdivision (a)(1) of this section.

"(e) Possession of a vehicle held for sale in the course of business on which the serial number or other identification number or mark has been obscrued is prima facie evidence of knowledge of that fact.

"(f) A report by the defendant to the police or other appropriate government agency before arrest is a defense to a charge of violating subdivision (a)(2) of this section. The burden of injecting this issue is on the defendant, but this does not shift the burden of proof.

"(g) Obscuring identity of a vehicle is a Class C. felony."

STATEMENT OF THE CASE

Petitioner was indicted in separate indictments for Attempted Assault in the First Degree under §13A-6-20 and §13A-4-2, Code of Alabama, 1975, and for Possession of a Vehicle with Knowledge That the Identification Number Had Been Obscured under §13A-8-22, Code of Alabama, 1975. The cases were consolidated for trial, and convictions were had in a jury trial in the Circuit Court of Mobile County, Alabama, on both counts. The sentence was twenty (20) years under Alabama's habitual felony offender statute, Petitioner having been convicted of three (3) prior felonies. §13A-5-9, Code of Alabama, 1975.

The Court of Criminal Appeals of Alabama affirmed Petitioner's convictions without opinion on June 26, 1984, and overruled Petitioner's application for rehearing

without opinion on August 14, 1984. The Supreme Court of Alabama affirmed the convictions without written opinion on November 30, 1984.

The basis for jurisdiction in the Circuit Court of Mobile County, Alabama, is §12-11-30, Code of Alabama, 1975, which confers exclusive original jurisdiction of all felony prosecutions on the Circuit Court.

The federal question sought to be reviewed by this petition was first raised on direct appeal by Petitioner in his brief to the Court of Criminal Appeals of Alabama, wherein the issue of ineffective assistance of counsel was first raised. The issue was stated as follows in Petitioner's brief to said Court in Support of Application For Rehearing to said Court, and in his brief in support of Petition for Writ of Certiorari to the Supreme Court of Alabama:

"Was trial counsel's representation of Appellant ineffective?"

The argument cited as authority the Sixth Amendment and the other authority herein cited. The appellate courts of Alabama affirmed the convictions without rendering opinion.

Officer James Waldrop of the Mobile Police Department Traffic Division testified that on June 3, 1982 he clocked a pickup truck proceeding down Airport Boulevard at a speed of eighty-seven miles per house. (R-8). The officer attempted to flag down the vehicle, at which time the vehicle swerved at the officer as if he was trying to run over him and started coming at the officer. (R-8). A high speed chase followed in which the officer kept the truck in his constant vision. (R-9). Officer Waldrop followed the truck into a subdivision on to a dead end street at

which point he lost control of his motorcycle. (R-10). Officer Waldrop could not identify Petitioner as being the driver of the truck until the next day when he came to the Traffic Division to claim his truck. (R-11). He identified Petitioner as being the driver of the Maxda pickup truck. (R-12).

Officer George Goodwin of the Mobile County Police Department testified that he arrived at the scene where the truck had been abandoned and took the registration papers out of the glove dompartment of the 1973 Mazda pickup truck. (R-22). He testified that he found registration papers for the 1971 Datsun in the Mazda pickup truck and read Petitioner's name on these registration papers. (R-23). He further testified that he talked to Petitioner the day after the alleged incident in the Traffic Division, and Petitioner told him that he had loaned his truck to

someone and he understood that the officer had impounded the truck and that he wanted it back. (R-23). The VIN plate with serial numbers on it for a Datsun Motor Company vehicle were found on the vehicle which Petitioner drove. (R-24). Petitioner identified the truck as his and stated that the ownership papers were in the glove compartment. (R-26). There was a key given to Detective Robert H. Steade of the Mobile Police Department by the owner of the pickup truck, Harry Brooks, which fit the ignition switch but did not start the truck. (R-30). Harry Brooks then said that his truck was stolen on May 14, 1982, and that he was the owner of the 1973 Mazda pickup truck in question. (R-21). He had purchased the truck from Gordon Napier, who gave him a bill of sale for the truck. The confidential VIN number of the impounded 1973 Mazda matched

the VIN number on the bill of sale from Mr. Napier to Mr. Brooks. (R-32 & R-35). John Michael Wilson testified that he had previously sold a 1971 Datsun to Petitioner and that the VIN numbers had not been changed or altered prior to the sale. (R-37). Mr. John Reid of the Alabama Bureau of Investigation testified that the fair market value of the impounded Mazda was approximately fourteen hundred dollars and that the confidential VIN numbers on the impounded vehicle matched the VIN number on the bill of sale from Napier to Brooks. (R-35 & R-40).

Petitioner called as his only witness Diantha Marie Weatherly. The essence of her testimony was that she had seen the 1973 Mazda pickup truck prior to June 3, 1983, and that both times she had seen it an individual named Michael Leonard was driving the vehicle. (R-47). Michael

Leonard was no relation to Petitioner or to Petitioner's stepfather, Harold Crooomes. (R-47). She further testified that she had never seen Petitioner in the 1973 Mazda pickpu. (R-48), and that at the time Petitioner wento to pick up the 1973 Mazda pickup truck no mention was made of the assault on the police officer with the truck, or of trying to run over the police officer on the motorcycle. (R-45).

Trial counsel filed no pretrial motions on his behalf. (Record). Trial counsel did not object to the motions to consolidate the offenses filed by the State, nor did he file a motion for severance. He failed to call as witness for Petitioner, Harold Croomes, Petitioner's stepfather, whose testimony was given in an affidavit in support of his motion for new trial. He testified that Petitioner had known nothing about the Mazda truck in question and had

absolutely nothing to do with switching any tag or VIN numbers. (R-24). And David Lloyd Gregary, whose testimony in an affidavit in support of Appellant's motion for new trial was offered, testified that he witnessed the alleged incident wherein Petitioner allegedly attempted to run over Officer Waldrop and that the Officer's motorcycle slid out from under him, and that Petitioner did not try to run over the officer. (R-26).

Trial counsel called only one witness in Appellant's defense, although he stated on record that there was at least one witness that he had not interviewed prior to trial, which he needed to talk to before continuing with his case. (R-39). He failed to make a motion to exclude the State's evidence and failed to file a motion for judgment of acquittal. Trial counsel further failed to object or except to the Court's oral charge that Petitioner was charged in

an indictment in this trial with the crime of Receiving Stolen Property in the First Degree. Petitioner was not convicted of Receiving Stolen Property. The charge by the court with a crime with which Petitioner was not charged in any indictment is error, to which trial counsel failed to object. Trial counsel further failed to request any written instructions to supplement the Court's oral charge.

ARGUMENT

By failing to pursue a line of investigation in not calling witnesses favorable to Petitioner, by failing to file pretrial motions, by failing to move for judgment of acquittal, and by failing to object to the trial judge's charge to the jury on the crime of Receiving Stolen Property, for which Petitioner was not being tried, trial counsel rendered ineffective assistance and denied Petitioner the right to a fair trial

as guaranteed by the Sixth and Fourteenth Amendments. The rigid test set forth by this Honorable Court in Strickland v. Washington, ____ U.S. _____, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), requires that, in order to sustain a claim of ineffective assistance of counsel, a defendant

> . . . must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. 80 L. Ed. 2d at 693.
>
> The proper measure of attorney performance remains simply reasonableness under prevailing professional norms. 80 L. Ed. 2d at 694.

Where counsel fails to investigate sources of defense and merely gives a perfunctory defense, such errors are so serious as to deprive the defendant of a

fair trial. Strickland v. Washington, ____ U.S._____, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); Adams v. Balkcom, 688 F.2d 734 (11th Cir. 1982), Davis v. Alabama, 596 F.2d 1214 (5th Cir. 1979), vacated as moot, 446 U.S. 903 (1980); Phelps v. State, 439 So.2d 922 (Ala. Crim. App. 1983).

Under the facts of this case, the seriousness of counsel's omissions resulted in the convictions which, had counsel presented evidence of the two omitted witnesses, Gregory and Croomes, (R-24,26), would have not been had under a reasonable interpretation of the facts. Counsel failed to "make the adversarial process work," Strickland v. Washington, 80 L. Ed. 2d at 695, by waiting until the day of trial to consult with witnesses and then by failing even to consult with these witnesses on the day of trial. (R-30).

Had Croomes and Gregory been called on behalf of the defense, an acquittal

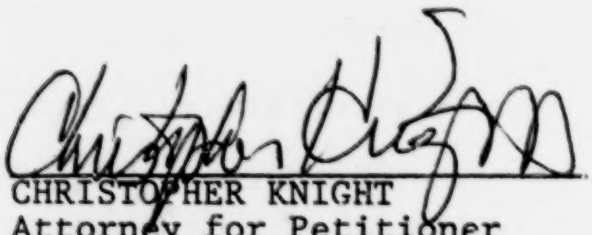
would, in all likelihood, have been obtained. The record is not supportive of any contention that counsel's misfeasance was based upon informed strategic choices not to call exculpatory witnesses. It is clear that he did not even consult with these witnesses to determine whether or not their testimony was exculpatory. (R-39).

Furthermore, the trial judge's charge to the jury on a crime for which Petitioner was not even charged was overwhelmingly prejudicial, and counsel's failure to object in order to preserve this issue for appellate review was not within the reasonableness standard set forth in Strickland, and under the standard announced heretofore by Alabama appellate courts. Phelps v. State, 439 So.2d 727 (Ala. Crim. App. 1983).

It is respectfully submitted that the performance of trial counsel was not within the standards enunciated in the authority herein cited and that the writ prayed for

herein is due to be granted and the judgments of the lower courts are due to be reversed and remanded to the trial court for a new trial in conformity with the authority herein cited.

Respectfully submitted,



CHRISTOPHER KNIGHT
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Mobile, Alabama 36602

APPENDIX

JUDGMENT - SENTENCE - NOTICE OF APPEAL - EXECUTION OF SENTENCE - SUSPENDED PENDING APPEAL

DATE TUESDAY, JUNE 14th, 1983

STATE OF ALABAMA Byrd -vs-CC 82-3502 Rayford Norman Jackson (White Male - Age) DC82- 2034 B.D. 5/6/39	OBSCURING IDENTITY OF A VEHICLE Defendant adjudged guilty - Sentenced to imprisonment in Penitentiary for 20 years - (Habitual Offender) - Concurrent - Notice of Appeal - Execution of sentence suspended pending appeal - Defendant allowed to remain on same bond. Defendant's attorney, Reggie Stephens, in court.

This day in open court came the State of Alabama by its District Attorney and the defendant in his own proper person and with his attorney, Reggie Stephens, and the defendant was brought into open court on this day to receive sentence upon a conviction had against him for the offense of Obscuring Identity of a Vehicle.

Thereupon in open court on this day the defendant being asked by the court if he had anything to say why the judgment and sentence of the law should not be passed upon him, replied "he had not"; It is therefore considered and adjudged by the court that the defendant is guilty of the offense of Obscuring Identity of a Vehicle as charged in the indictment and that the State of Alabama for the use of Mobile County have and recover of the defendant the costs of this prosecution adn that the defendant be sentenced to imprisonment in the Penitentiary of the State of Alabama for the term of

Twenty (20) years under the Habitual Offender Statute.

JUDGMENT - SENTENCE - NOTICE OF APPEAL - EXECUTION OF SENTENCE - SUSPENDED PENDING APPEAL

DATE TUESDAY, JUNE 14th, 1983

STATE OF ALABAMA Byrd -vs-CC 82-3047 Rayford Norman Jackson (White Male - Age) DC82 - 31994 B.D. 5/6/40	Attempting to commit Assault in the First Degree - Defendant adjudged guilty - Sentenced to imprisonment in Penitentiary for 20 years (Habitual Offender) - Notice of Appeal - Execution of sentence suspendend pending Appeal - Defendant allowed to remain on same bond. Defendant's attorney, Reggie Stephens in court.

This day in open court came the State of Alabama by its District Attorney and the defendant in his own proper person and with his attorney, Reggie Stephens, and the defendant was brought into open court on this day to receive sentence upon a conviction had against him for the offense of Attempting to commit Assault in the First Degree.

Thereupon in open court on this day the defendant being asked by the court if he had anything to say why the judgment and sentence of the law should not be passed upon him, replied "he had not"; It is therefore considered and adjudged by the court that the defendant is guilty of the offense of Attempting to Commit Assault in the First Degree as charged in the indictment and that the State of Alabama for the use of Mobile County have and recover of the defendant the costs of this prosecution and that the defendant be sentenced to imprisonment in the Penitentiary of the State of Alabama for

the term of Twenty (20) years under the Habitual Offender Statute.

STATE OF ALABAMA)

COUNTY OF MOBILE)

I, Maurice W. Castle, Jr., Clerk of the Circuit Court of Mobile County, Alabama, do hereby certify that the attached are true and correct and accurate copies of the judgments in the case of the State of Alabama vs. Rayford Norman Jackson (Case #82-3047 and 82-3502) as the same remains in the record in my office.

Witness my hand and seal this 14th day of June, 1983.

original signed
Clerk of the Circuit Court
of Mobile County, Alabama

THE ALABAMA COURT OF CRIMINAL APPEALS
Montgomery, Alabama

RE: CC-3047, 82-3502

1st Div. 668 MOBILE Circuit Court

RAYFORD NORMAN JACKSON
Appellant

vs.

THE STATE
Appellee

This is to advise you that on June 26, 1984 the Court of Criminal Appeals announced decision of:

Affirmance) No opinion

Yours truly,
original signed
MOLLIE JORDAN, CLERK

THE ALABAMA COURT OF CRIMINAL APPEALS

Montgomery, Alabama

RE: CC 82-3047, 82-3502

1st Div. 668, MOBILE Circuit Court

RAYFORD NORMAN JACKSON

Appellant

vs.

THE STATE

Appellee

This is to advise you that on August 14, 1984, the Court of Criminal Appeals announced decision of:

Application for rehearing overruled) no opinion

Rule 39(k) motion denied

Yours truly,

original signed
MOLLIE JORDAN, CLERK

THE STATE OF ALABAMA - JUDICIAL DEPARTMENT

IN THE SUPREME COURT OF ALABAMA

November 30, 1984

83-1348

EX PARTE: RAYFORD NORMAN JACKSON

PETITION FOR WRIT OF CERTIORARI

(Re: Rayford Norman Jackson v. State)

CRIMINAL APPEALS 1/668

CERTIFICATE OF JUDGMENT
WRIT DENIED

The above cause having been duly submitted, IT IS CONSIDERED AND ORDERED that the petition for writ of certiorari is denied. Costs taxed to petitioner.

ADAMS, J. - TORBERT, CJ., FAULKNER, ALMON AND EMBRY, JJ., CONCUR.

I, ROBERT G. ESDALE, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.
Witness my hand this 30 day of Nov, 19 84

original signed
Clerk, Supreme Court of Alabama

CERTIFICATE OF SERVICE

I, Christopher Knight, a member of the Bar of the Supreme Court of the United States, do hereby certify that I have served three (3) copies of this Petition for Writ of Certiorari on Honorable Charles A. Graddick, Attorney General for the State of Alabama, by depositing same in the United States mail at the United States Post Office, 250 Saint Joseph Street, properly addressed and first class postage prepaid thereon on this 29th day of January, 1985, at Mobile, Alabama.

CHRISTOPHER KNIGHT